UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/630
18 November 1993

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 630

Case No. 533: KOFI

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Ioan Voicu; Mr. Mikuin Leliel Balanda;

Whereas at the request of Tetteh A. Kofi, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended to 31 July, 30 September, 31 October and 30 November 1992, 15 January and 31 January 1993, the time-limit for the filing of an application to the Tribunal;

Whereas, on 28 January 1993, the Applicant filed an application in which he requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgement No. 519, rendered by the Tribunal on 29 May 1991;

Whereas the application contained pleas which read, in part, as follows:

> "The Applicant respectfully requests the Administrative Tribunal:
>
> A. Preliminary Measures
>
> (1) To direct the Respondent to obtain and furnish the Applicant with the following vital documents:
>
> ...

B. Substantive Measures

...

(3) To review his case No. 533 and to revise its Judgement No. 519, Kofi (1991), pursuant to article 12 of the Statute of the Tribunal, in view of the fact that the said Judgement evidently reflects gross errors of facts and omission of certain vital facts, ...

...

(7) To order the Respondent, pursuant to article 9 of the Statute of the Tribunal:

(a) To pay the Applicant appropriate and adequate compensation for the financial loss suffered by him as a direct consequence of the unilateral abrogation of the legally binding contract of September 1983, between him and the Governing Council of IDEP [African Institute for Economic Development and Planning], namely:

..."

Whereas the Respondent filed his answer on 15 April 1993;

Whereas, in a communication dated 8 November 1993, the Applicant requested a postponement of his case, which the Tribunal rejected on 18 November 1993;

Whereas the facts in the case have been set forth in Judgement No. 519;

On 28 January 1993, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant has discovered vital documents in his official status file, which he did not know existed and which were not known to the Tribunal when it rendered Judgement No. 519.

2. The Tribunal's decision was based entirely on gross errors of fact and omission of vital facts.

Whereas the Respondent's principal contentions are:

1. The application for revision fails to introduce any fact of a decisive nature which was unknown to the Tribunal at the time of the judgement.

2. The Applicant's substantive claim is res judicata.

The Tribunal, having deliberated from 25 October to 18 November 1993, now pronounces the following judgement:

I. By his application of 26 January 1992, the Applicant asked the Tribunal for a revision of Judgement No. 519, rendered by the Tribunal on 29 May 1991, alleging that the said judgement reflects gross errors of fact and the omission of certain vital facts. In addition, the Applicant reargues the substance of his case, seeking monetary compensation, requests that oral proceedings be held and asks the Tribunal to direct the Respondent to furnish supplementary documents.

II. The Tribunal considers that the material before it is adequate to decide this case. It therefore denies the request for oral proceedings and for supplementary documents.

III. The Tribunal notes that, in effect, the Applicant seeks to obtain the revision of Judgement No. 519, under article 12 of the Statute of the Tribunal. As stated in Judgement No. 303, Panis (1983), paragraph I, "the Statute ... balances the need for finality of judgements with the requirement of fairness in a particular case where, without negligence, a 'decisive factor' is discovered after the delivery of a judgement. The standards contained in article 12 are accordingly relatively strict and lay a substantial burden upon a party who requests revision."

IV. Further, the Tribunal has held in Judgement No. 177, Fasla (1973), paragraph VI, that article 12 of its Statute "makes it possible to challenge a judgement which was given on the basis of

erroneous or incomplete facts, provided that the facts invoked by the party claiming revision were unknown to the Tribunal and to that party when the judgement was given and that these facts are of such a nature as to be decisive factors." That view was reiterated, inter alia, in Judgement No. 585, Pappas (1992), paragraph III and is consistent with the jurisprudence of the Tribunal which acknowledges that its powers of revision are strictly limited by its Statute and cannot be enlarged or abridged by the Tribunal.

V. In his conclusion and pleas, the Applicant submits that the critical facts presented by him clearly demonstrate that he became a "victim" of "obstruction of justice" caused by the Administration, as well as of "denial, failure and miscarriage of justice" caused by the IDEP and ECA Administrations in the first instance, and thereafter by the Representative of the Secretary-General, by the Joint Appeals Board, by the Office of Legal Affairs as the Respondent before the Tribunal, and above all, by the Tribunal itself". The Applicant asks the Tribunal "to grant him specific relief as requested in his pleas, pursuant to article 9 of its Statute, in the cause of equity and justice".

VI. The Applicant made considerable efforts to collate numerous documents containing material of a predominantly factual nature, to advance interpretations of his claims by certain individuals. Nevertheless, the Tribunal finds that, in reality, the main purpose of the pleas submitted by the Applicant is merely to reargue issues involved in the proceedings which led to Judgement No. 519.

VII. In this context, the Tribunal recalls its views as expressed in Judgements No. 497, Silveira (1990), paragraph XV; No. 503, Noble (1991), paragraph II and No. 585, Pappas (1992), paragraph VI, that "attempts to reargue issues already decided by [the Tribunal] and which are res judicata" are considered to be "improper" and an "abuse" of the Tribunal's procedure.

VIII. In addition, the Tribunal notes that the Applicant requested review of Judgement No. 519, by the Committee on Applications for Review of Administrative Tribunal Judgements, which considered the Applicant's case and decided that there was not a substantial basis for the application, under article 11 of the Statute of the Administrative Tribunal.

IX. The Tribunal concludes that the Applicant has failed to establish,within the meaning of article 12 of its Statute, the existence of any new fact of a decisive nature, unknown to him and to the Tribunal when Judgement No. 519 was rendered, that would warrant revision of the judgement. Nor has the Applicant shown any clerical or arithmetical mistake in the judgement, or errors arising therein from any accidental slip or omission, that would warrant any correction of the judgement.

X. For the foregoing reasons, the application is rejected.

(Signatures)

Samar SEN
Vice-President, presiding

Ioan VOICU
Member

Mikuin Leliel BALANDA
Member

New York, 18 November 1993

R. Maria VICIEN-MILBURN
Executive Secretary